



February 16, 1999

Ms. Kelly Fletcher Schurr
Assistant City Attorney
Office of the City Attorney
Municipal Building
Dallas, Texas 75201

OR99-0457

Dear Ms. Schurr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122330.

The City of Dallas (the "city") received a request to obtain copies of all letters and notes regarding the eminent domain of property located in Floral Farms. You have released some of the requested information, but you contend that the remainder of the requested information must be withheld pursuant to sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample information.¹

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that the marked information requested

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

in Exhibit B reveals the client's confidential communications and, therefore, may be withheld under section 552.107.

Section 552.111 of the Government Code is the proper exception under which to claim the attorney work product privilege once the litigation for which the information was created has concluded. Open Records Decision No. 647 at 3 (1996). A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was (1) created for trial or in anticipation of civil litigation, and (2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 at 6 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *Id.* at 3-4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. *Id.* at 4. You have shown that this information was created for trial or in anticipation of litigation. We conclude that, except for the blank form, the information in Exhibit C is protected as attorney work product under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 122330

Enclosures: Submitted documents

cc: Ms. Jewel Floyd
3815 Myrtle Street
Dallas, Texas 75215
(w/o enclosures)